

JAMES L. AND GORDON L. THOMPSON

IBLA 72-482

Decided January 7, 1974

Appeal from an Idaho State Office decision rejecting appellants' preference right bid for land offered for sale under public sale I-3589.

Affirmed.

Public Sales: Preference Rights

Under 43 U.S.C. § 1171 (1970), and 43 CFR 2711.4(b)(2), a preference right applicant's bid to purchase is properly rejected when the date on the certificate of proof of ownership does not show that the applicant was a fee title owner of contiguous lands as of the last day of the 30 day preference right period, a date specified by the authorized officer.

As between two preference right applicants for a 40 acre parcel in a public sale under 43 U.S.C. § 1171 (1970), and 43 CFR 2711.4(b)(2), the requirements imposed upon preference right applicants are strictly construed.

APPEARANCES: G. Rich Andrus, Esq., of Rigby & Thatcher, Rexburg, Idaho, for appellants.

OPINION BY MR. GOSS

Appellants have appealed from an Idaho State Office decision dated May 30, 1972, rejecting their preference right claim for the 40 acres comprising the NE 1/4 SW 1/4, sec. 29, T. 8 N., R. 41 E., B.M., Idaho, which was offered for public sale pursuant to Rev. Stat. § 2455, as amended, 43 U.S.C. § 1171 (1970).

The sale was held in response to petition application (I 3589) of Charles Bert Loveland, a preference right applicant. The decision declared Loveland purchaser of the land. ^{1/}

Appellants and Loveland, as owners of contiguous lands seeking to claim preference rights, were required by notice dated May 10, 1972, to show proof of such ownership in whole fee title as of May 5, 1972. Departmental regulation 43 CFR 2711.4(b)(2) provides:

(2) Each preference-right applicant must, within the time specified by the authorized officer, or such extensions of time as he may grant, submit proof of ownership of the whole title to the contiguous lands, that is, he must show that he had the whole title in fee on the last day of the 30-day period. The authorized officer will specify that date. * * * (Emphasis added.)

The notice also contained the following caveat:

If the certificate does not show ownership of contiguous land on May 5, 1972, the applicant's preference right will have been lost as to this particular sale.

Loveland complied with such requirement. James L. Thompson filed a certificate of LaMonte Bauer, Deputy Recorder of Fremont County, on May 24, 1972, that as of April 5, 1972, the county records showed that appellants owned land contiguous to the sale land. The State Office decision of May 30, 1972, rejected appellants' preference right bid because they failed to show sole ownership in fee simple of contiguous lands as of May 5, 1972.

^{1/} Loveland, upon being served with appellants' notice of appeal and statement of reasons, filed a timely answer with this Board pursuant to 43 CFR 4.414. However, 43 CFR 4.414 also requires as follows:

"Answers must be filed with the Board * * * and must be served on the appellant * * *, not later than 15 days thereafter. Proof of such service * * *, must be filed with the Board within 15 days after service." (Emphasis added.)

The record contains no evidence that Loveland provided appellants with a copy of his answer. When an answer is not served within the time required, the above regulation provides that the answer "may be disregarded in deciding the appeal."

Loveland's answer controverts statements made by appellants concerning the physical aspects of the sale land and contiguous sections. We need not decide the factual issues raised by the answer, as the case turns on a legal issue.

On appeal appellants allege that they took title to contiguous lands by gift deed in January 1969 and that they are presently the owners of that property in fee simple. They contend that LaMonte Bauer through mistake and inadvertence certified that as of April 5, 1972, appellants held fee simple title. As proof of this mistake appellants have filed an affidavit in which LaMonte Bauer swears that he had intended to certify that appellants owned contiguous lands as of May 5, 1972. Appellants have also provided a new certificate in which LaMonte Bauer certified that as of the date thereon, June 20, 1972, appellants were the fee simple owners of contiguous land.

As between two preference right applicants for a 40 acre parcel, the requirements imposed upon preference right applicants are strictly construed. See Robert A. Davidson, 13 IBLA 368 (1973). The Board reviewed the Department interpretation of the requirements in Mildred M. Miller, 7 IBLA 363, 364 (1972):

The requirement that the requisite proof of ownership be filed within the time specified by the authorized officer is mandatory. The regulation states it in terms that are clear and unambiguous. * * * The Department has strictly construed the regulatory requirements imposed upon preference right applicants at public sales as a prerequisite to their establishing a preference right to purchase. Gene Van Matre, 6 IBLA 229 (1972); Ethel E. Tashoff, A-30362 (July 23, 1965); Fred and Mildred M. Bohen, 63 I.D. 65 (1956); Floyd J. Whittaker, Idaho 016007 (March 6, 1968); James E. Zajic, New Mexico 02560301 (January 2, 1968); see Frank Allison, 3 IBLA 317 (1971). (Emphasis added.)

In the present case appellants have failed to comply with the requirements of the regulations. A certificate of ownership which shows that a preference right claimant is the fee simple owner of contiguous land on a date other than that required by the authorized officer is inadequate. See Esther C. Drake, A-30246 (July 13, 1964); Paul A. Cook, A-28328 (July 7, 1960). The fact that the error which led to the rejection of the preference right bid was committed by a third party is not determinative. See Ethel E. Tashoff, A-30362 (July 23, 1965). A preference right applicant is required to submit proof of ownership as of a particular date, and he must accept responsibility for any mistake that is made.

The affidavit and certificate of ownership filed by appellants with their statement of reasons for appeal may not serve to justify the incorrectly dated certificate, as such proof was not submitted within the time stated in the notice of May 10, 1972. Such failure to make a timely filing causes appellants to lose their preference right as to this particular sale. Robert A. Davidson, supra.

Appellants raise other issues on appeal relating to the physical characteristics of the sale land and the contiguous land. These issues need not be considered as we hold that the State Office acted correctly in rejecting appellants' preference right bid and declaring Loveland purchaser of the land.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss, Member

We concur:

Frederick Fishman, Member

Douglas E. Henriques, Member

